

1 Ronald S. Kravitz (SBN 129704)
2 James C. Shah (SBN 260435)
3 SHEPHERD, FINKELMAN, MILLER
4 & SHAH, LLP
5 201 Filbert Street, Suite 201
6 San Francisco, CA 94133
7 Telephone: (415) 429-5272
8 Facsimile: (866) 300-7367
9 rkravitz@sfmslaw.com
10 jshah@sfmslaw.com

11 Jeffrey S. Goldenberg (*admitted pro hac vice*)
12 GOLDENBERG SCHNEIDER, L.P.A.
13 One West 4th Street, 18th Floor
14 Cincinnati, OH 45249
15 Telephone: (513) 345-8291
16 Fax: (513) 345-8294
17 jgoldenbergs@gs-legal.com

18 (Additional Attorneys for Plaintiff Listed on Signature Page)

19 *Attorneys for Plaintiff and the Class*

20 **UNITED STATES DISTRICT COURT**
21 **NORTHERN DISTRICT OF CALIFORNIA**

22 PHIL SHIN, on behalf of himself and all
23 others similarly situated,

24 Case No. Case No.: 5:18-cv-05626-NC

25 Plaintiff,

26 vs.

27 PLANTRONICS, INC.,

28 Defendant.

29 **PLAINTIFF'S UNOPPOSED MOTION TO AMEND CLASS NOTICE**
30 **PROCEDURE AS IT APPLIES TO AMAZON, INC. CUSTOMERS**

Pursuant to Federal Rule of Civil Procedure 23(c)(1)(C),¹ Plaintiff respectfully requests that the Court amend the August 13, 2019 order preliminarily approving this Settlement (ECF No. 75) to permit Amazon, Inc., a third-party retailer who received a subpoena from Class Counsel, to issue an amended class notice (“Amazon Notice”) by email to certain Class Members identified as purchasers of the Headphones. The Amazon Notice is attached as Exhibit A and will be issued directly by Amazon as an email to its customers who purchased the Headphones (approximately 70,000 Class Members). Amazon will issue the notice no later than December 3, 2019 (the current notice deadline is October 31, 2019). Class Counsel also request that the Court extend the opt-out and objection deadline for these Amazon Notice recipients from November 22, 2019 until December 17, 2019. These modifications will not affect any other case deadlines and will not require the Court to alter the December 20, 2019 fairness hearing date. Defendant does not oppose this motion.

In support of this unopposed motion, Plaintiff states as follows:

- 1) On August 13, 2019, the Court entered an Order granting Plaintiff's renewed motion for preliminary approval of class action settlement agreement and directing notice to the Settlement Class (“Preliminary Approval Order”). (ECF No. 75).
- 2) The Preliminary Approval Order orders that the Settlement Administrator and any third parties must complete the mailing or emailing of the full Settlement Notices and Short Form Notices to Class Members by October 31, 2019. (ECF No. 75, ¶14-b).
- 3) In preliminarily approving the Settlement Agreement, the Court approved long-form, postcard, and email notice documents substantially in the forms presented by Plaintiffs. (ECF No. 70-4).

¹ Rule 23(c)(1)(C) states: “Altering or Amending the Order. An order that grants or denies class certification may be altered or amended before final judgment.” The Court granted preliminarily certification in its August 13, 2019 Order Granting Plaintiff's Renewed Motion for Preliminary of Class Action Settlement. (ECF. No. 75, p. 4)

1 4) Pursuant to the Preliminary Approval Order, Class Members have until November 22, 2019
2 to request exclusion from or opt-out of the Class. (ECF No. 75, ¶19).
3
4 5) In accordance with the Preliminary Approval Order, except for those Class Members who
5 purchased their Headphones from Amazon, class notice has been issued or will be issued by
6 October 31, 2019.
7
8 6) After numerous conversations and email exchanges with Class Counsel in response to the
9 third-party retailer subpoena it received, and citing the need to protect its customers' privacy
10 and reduce customer confusion and dissatisfaction, Amazon proposed to issue the Amazon
11 Notice directly to its customers as follows:

12 No later than December 3, 2019—Amazon will email the Amazon Notice
13 to its customers that purchased the Headphones. The Amazon Notice will
14 be substantially in the form attached to the accompanying Exhibit A.

15 7) The Parties request that all Amazon Notice recipients have until December 17, 2019 to
16 request exclusion from the Settlement or object to the Settlement. The Amazon Notice
17 contains a December 17, 2019 objection and opt-out deadline. Also, the Settlement Website
18 will be amended to make clear that Amazon Notice recipients will have until December 17,
19 2019 to opt-out or object to the Settlement.

20 8) Several courts have approved of Amazon sending similar direct email notices to its
21 customers, including in the following cases:

22 a. Order Approving Class Notice to Amazon.com Customers, *In re ARRIS Cable*
23 *Modem Litigation*, No. 5:17-cv-01834-LHK (N.D. Cal. Feb. 13, 2019), ECF No.
24 168;

25 b. Order Granting Stipulation to Modify Order Directing Notice to the Class, *Park et.*
26 *al., v. ZUFFA LLC*, No. 2:17-cv-02282-APG-VCF (D. Nev. April 4, 2018), ECF No.
27 76;

1 c. Declaration of Steven Weisbrot, Esq. of Angeion Group, LLC Re: Implementation
2 of Notice Program, *In re Lenovo Adware Litigation*, No. 5:15-md-02624-HSG (N.D.
3 Cal. Feb. 14, 2019), ECF 248-1 at Ex. D;
4
5 d. Declaration of Tammy Malley-Naslund, *Wolf v. Hewlett-Packard*, No. 5:15-cv-
6 01221-TJH (C.D. Cal. Sept. 4, 2018), ECF 136-8;
7
8 e. Order Approving Class Notice to Amazon Customers, *In Re Nexus Products*
9 Liability Litigation, No. 5:17-cv-02185-BLF HSG (N.D. Cal. Jun. 04, 2019), ECF
10 No. 211-2;
11
12 9) Amazon has reported that—because of its ongoing business relationship with its
13 customers—its past direct notice efforts have been quite successful, resulting in a high
14 percentage of emails being opened, and a low percentage of emails being bounced back.
15
16 10) This motion—if approved—will not require an adjustment to the December 20, 2019 Final
17 Fairness Hearing date.

18 Accordingly, Plaintiff respectfully requests that the Court: (1) approve the Amazon Notice,
19 attached as Exhibit A; (2) direct Amazon to send the approved Amazon Notice to its customers who
20 purchased the Headphones; and, (3) order that all recipients of the Amazon Notice shall have until
21 December 17, 2019 to request exclusion from the Settlement Class or object to the Settlement. This
22 change will not affect any other case deadlines.

23 Dated: October 30, 2019

24 Respectfully submitted,

25 /s/ Jeffrey S. Goldenberg

26 Jeffrey S. Goldenberg (*admitted pro hac vice*)
27 Goldenberg Schneider, L.P.A.
28 One West 4th Street, 18th Floor
 Cincinnati, OH 45202
 Telephone: (513) 345-8291
 Fax: (513) 345-8294
 jgoldenber@gs-legal.com

1 Ronald S. Kravitz (SBN 129704)
2 James C. Shah (SBN 260435)
3 Shepherd, Finkelman, Miller & Shah, LLP
4 201 Filbert Street, Suite 201
5 San Francisco, CA 94133
6 Telephone: (415) 429-5272
rkravitz@sfmslaw.com
jshah@sfmslaw.com

7 W.B. Markovits (*admitted pro hac vice*)
8 Justin C. Walker (*admitted pro hac vice*)
9 Terence R. Coates (*admitted pro hac vice*)
10 Markovits, Stock & DeMarco LLC
11 3825 Edwards Road, Suite 650
12 Cincinnati, OH 45209
13 Telephone: (513) 665-0200
14 Fax: (513) 665-0219
bmarkovits@msdlegal.com
jwalker@msdlegal.com
tcoates@msdlegal.com

15 *Attorneys for Plaintiff and the Class*

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ATTESTATION OF FILER

Pursuant to Civil Local Rule 5-1(i)(3), I, Jeffrey S. Goldenberg, hereby attest that concurrences in the filing of the document has been obtained from each of the signatories.

Dated: October 30, 2019

Goldenberg Schneider, L.P.A.

By: /s/ Jeffrey S. Goldenberg

EXHIBIT A

Subject: Notice Regarding Class Action Settlement

Amazon is emailing you because our records indicate that you may have purchased Plantronics BackBeat FIT wireless sport headphones, version Genesis or 16M, between April 1, 2014 and October 31, 2019. If so, you may be entitled to receive money (up to \$50.00 per claim) or an extended warranty from a class action settlement. In *Shin v. Plantronics, Inc.*, a federal court in California preliminarily approved the settlement of a class action lawsuit involving these products.

Amazon is sending this email on behalf of the parties to the lawsuit, and as required by the Court. Because we are not involved in the lawsuit, we cannot assist you directly. To determine whether you are a member of the class, obtain a copy of the Settlement Agreement, view the full notice approved by the Court, and file a claim, please go to www.headphonesettlement.com or call the Settlement Administrator at 1-800-983-6533. The full notice also provides details on how to opt out or object to the settlement. Opt outs and objections must be submitted by December 17, 2019. Claims must be submitted by December 31, 2019.

If you have questions about the settlement, please contact the Settlement Administrator at 1-800-983-6533. Please do not respond to this email directly.

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

[Proposed] ORDER APPROVING CLASS NOTICE TO AMAZON, INC. CUSTOMERS

Having reviewed and considered Plaintiff's Unopposed Motion To Amend Class Notice Procedure As It Applies To Amazon, Inc. Customers ("Motion"), and for good cause shown, the Court hereby:

- 1) Approves the Amazon Notice attached as Exhibit A to the Motion;
- 2) Directs Amazon to email no later than December 3, 2019 the approved Amazon Notice to Amazon customers who purchased the Headphones; and,
- 3) Orders that all Amazon Notice recipients shall have until December 17, 2019 to request exclusion from the Settlement Class or to object to the Settlement.
- 4) Directs Amazon to provide a declaration to the Court on or before December 10, 2019 indicating compliance with this Order.

NATHANAEL M. COUSINS
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was filed electronically via the Court's ECF system, on October 30, 2019. Notice of electronic filing will be sent to all parties by operation of the Court's electronic filing system.

DATED: October 30, 2019

GOLDENBERG SCHNEIDER, L.P.A.

/s/*Jeffrey S. Goldenberg*
Jeffrey S. Goldenberg